

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFF POKORNY, LARRY BLENN, and	) Case No. 07-0201-SC
KENNETH BUSIERE, on behalf of	)
themselves and those similarly	) ORDER GRANTING MOTION FOR
situated,	) FINAL APPROVAL OF CLASS
	) SETTLEMENT; APPROVING JOINT
Plaintiffs,	) PROPOSAL FOR DISTRIBUTION
	) OF EXCESS; DEFERRING RULING
v.	) ON MOTION FOR ATTORNEY
	) FEES; ORDERING FILING OF
QUIXTAR INC., et al.,	) JOINT STATEMENT RE SPECIAL
	) <u>MASTER'S DUTIES</u>
Defendants.	)

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The Court, having considered: (1) the Class Action Amended Settlement Agreement, dated April 29, 2011, including all exhibits thereto (ECF No. 162-2 ("ASA")); (2) Plaintiffs' Motion for Final Approval of Settlement, and Plaintiffs' and Quixtar's Joint Proposal for Distribution of Excess, filed on October 12, 2012 (ECF No. 241 ("Motion")) and Quixtar's Memorandum in Support of the Motion (ECF No. 242 ("Quixtar Memo.")); (3) all of the supporting materials submitted in connection with the Motion; (4) all objections to the Motion; and having held a hearing on November 16, 2012 and considered the record of those proceedings and the representations and arguments of counsel, the Court hereby ORDERS that:

1           1. the Motion is GRANTED, and the ASA is APPROVED as fair,  
2 reasonable and adequate;

3           2. the Settlement Class preliminarily certified in this  
4 Court's Order of February 21, 2012 (ECF No. 216) is now CERTIFIED  
5 in accordance with Federal Rule of Civil Procedure 23;

6           3. the Joint Proposal for distribution of excess cash and  
7 products, as set forth in the Motion at pages 8-9 and the Quixtar  
8 Memorandum at pages 14-16, is APPROVED, and the Claims  
9 Administrator is authorized to send the proposed supplemental  
10 notices as soon as possible, and

11           4. the proposed Consent Judgment and Dismissal of all Claims  
12 with Prejudice is APPROVED and shall be entered by the Court.

13           The Court DEFERS consideration of Plaintiffs' unopposed motion  
14 for attorney fees, ECF No. 225, until such time as the Court is  
15 satisfied that the proposal for distribution of excess has been  
16 effected and a plan for equitable distribution of the settlement  
17 proceeds has been adduced and finalized.

18           The Court shall issue a separate order appointing as Special  
19 Master the Honorable James Larson, United States Magistrate Judge  
20 (Retired), to administer special hardship claims, pursuant to  
21 section 6.1.2 of the ASA and Federal Rule of Civil Procedure 53(a).

22           The parties acknowledge that the ASA authorizes the Court to  
23 modify the distribution of cash and products to qualified claimants  
24 so that such distributions are made in the most equitable manner,  
25 notwithstanding the limitations set forth in the ASA. Motion at 9  
26 (citing ASA §§ 6.1.5, 6.2.4); Quixtar Memo. at 14 (same). The  
27 Court ORDERS the parties to submit a single, joint statement  
28 indicating whether the parties consent to having the Special Master

1 issue a report with recommendations on how to effect the final  
2 distribution of cash and products, consistent with the terms of the  
3 ASA and the Court's own powers, as well as reports with  
4 recommendations on any motions that may later be filed.<sup>1</sup>

5 The joint statement should also clarify which standard of  
6 review the parties propose for the Special Master's recommended  
7 factual findings. See Fed. R. Civ. P. 53(f)(3).

8 The joint statement shall not exceed five (5) pages and shall  
9 be filed within ten (10) days of the signature date of this Order.

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11 IT IS SO ORDERED.

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13 Dated: November 30, 2012

  
UNITED STATES DISTRICT JUDGE

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28 <sup>1</sup> The pending motion for attorney fees will not be referred to the  
Special Master.